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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,  
Plaintiff,

v.

Civil No. 1:00-CV-2143  
Hon. Judge McClure, Jr.  
(Presiding)

JAKE MENDEZ, Warden, et al., Magistrate Blewitt  
Defendants.

BRIEF IN SUPPORT OF PRO SE PLAINTIFF'S MOTION  
FOR A PRELIMINARY INJUNCTION PURSUANT TO  
FACP RULE 65

COMES NOW PLAINTIFF, John Charles Kenney, acting pro se in the above captioned civil case. Kenney on Thursday, October 18, 2001, had filed a "Preliminary Injunction Motion" under the above Civil RULE 65. In accordance with Local Rule 7.5., and Civ. Rule 65(a)(1) requires Kenney to file this pro se brief, along with pertinent documents all supporting the Brief and Motion. As a result, Kenney files the instant brief in support of his preliminary-injunction-motion.

INTRODUCTION AND PROCEDURAL HISTORY

While Kenney was a prisoner at Allenwood USP on Wednesday, September 29, 1999, Defendants without provocation "violently" beat Kenney by repeatedly, and gratuitously striking him about his head and facial areas, causing "numerous" physical and

emotional injuries to Kenney. (See Attachments One and Two) (reflecting defendants infliction of physical and emotional injuries upon Kenney). As a result on December 12, 2000, Kenney instituted a Civil Rights Action under Bivens against four defendants, whom were all served accordingly on 12/22/00. (See DK) (docket item #1).

Although, Defendants committed this "aggravated" assault on Kenney, peculiarly Kenney was criminally indicted on 11/10/99. USA v. Kenney, No. 4:CR-99-280 (M.D. Pa.). Out of a three-count indictment, Kenney on ct 3 was found guilty by a jury on June 4, 2001, for possessing a disposable razor blade, which is considered contraband in a federal penal system. Kenney is currently pending sentencing on November 20, 2001.

Since Wednesday, September 29, 1999, Kenney has "involuntarily" been placed and held in isolation-segregation by himself till the present date. On October 13, 2000, Mr. Jesus "Jesse" Gonzales, the aggressor of Kenney, whom is also one of the named defendants has transferred to another facility located in the state of California. Shortly afterwards, another named Defendant, James "Jimmy" Scarborough quit his employment with Allenwood and is currently employed at an "entirely" different location. Another named Defendant, Ms. Kelly M. Keiser is still currently employed at Allenwood USP. Although, Keiser did not actively participate in assaulting Kenney, she was present. Keiser is being sued for not protecting

Kenney, when Gonzales and Scarborough "violently" beat him.

### LIBERAL PLEADING RULE IS INEFFECT

The present Rule 65 Motion, where Kenney is seeking injunctive relief is governed by relevant precedent and a U.S. Supreme Court directive, where Kenney "must be [given] afforded a measure of tolerance" [in the construction of his prose pleadings]. U.S. ex rel - Montgomery v. Brierley, 414 F.2d 552, 555 (3rd Cir. 1969). In the case of a prose litigant, the [motion] will be held to a less stringent standard than pleadings drafted by attorneys. Haines v. Kenney, 404 U.S. 519, 520 (1972); see also Fed. R. Civ. P. Rule 8(a)(2).

### NECESSITY OF A RULE 65 PRELIMINARY INJUNCTION PRO SE MOTION

It is imperative that injunctive relief be granted, because for the past (25) twenty-five months Kenney has been involuntarily held in isolation-segregation, since Wednesday, September 29, 1999, which is an awful long time. Despite Kenney's recent acquittals of counts 1 and 2 on June 4, 2001, regarding internal and external allegations of 9/29/99 Kenney is still being kept in an isolation-segregation "SHU" cell. Moreover, and more importantly, Kenney "suffers" some cognitive impairments, but none of which that would preclude him from entering a general [prison] population. (See Attachment-Three) (reflecting, dated 2/1/00). Surprisingly, Kenney has virtually maintained an exemplary record of good behavior for him to maintain such, coupled with



his cognitive impairments as recently diagnosed by this Court's expert, Board Certified Psychologist, Dr. S.A. Ragusa on December 5, 2000 is "extraordinary." Because, Kenney has an "extensive" mental health history past and current. Kenney is currently on a psychotropic prescription medication of "HYDROXYZINE" 50 mg. tablets. This medication was prescribed to Kenney by BOP's Psychiatrist, Dr. Grant on April 27, 2001, and renewed on August 8, 2001, expires. Below Kenney presents relevant caselaw that forbids him from being involuntarily held in an isolation-segregation SHU cell.

PLAINTIFF'S PERSUASIVE SHOWING IN REMAINING FREE FROM AN ISOLATION SEGREGATION SHU CELL AUTHORITIES IN SUPPORT

It is already established in USA v. John C. Kenney, Case No. 4:CR-99-0280. That, Kenney has legitimate psychological/psychiatric problems past and current, however, these problems do not preclude Kenney from being released into an "open" general prison population. Contrarily, Kenney's psych-problems do prohibit him from being in an isolation-segregation SHU cell and/or setting. Kenney's attendance in public at trial for (9) consecutive-days, where he exhibit decorum, coupled with (25) twenty-five months of good or accepted behavior "clearly" represents that Kenney is not a disciplinary, nor management problem. Therefore, keeping Kenney in an isolation-segregation SHU-cell is unjustifiable and illegal. As a result, such confinement is causing Kenney "severe" emotional and psychological difficulties, where it is seemingly becoming unbearable and intolerable for him to mentally sustain.

## KENNEY'S PERSUASIVE SHOWING AND SUPPORTING AUTHORITIES CONT'D

Out of "desperation" Kenney on June 20, 2001, had requested the Warden of ALLENWOOD USP to release him out of SHU-ISOLATION. (See Attachment-Four). The Warden "emphatically" denied Kenney's request. Wholly distraught by the Warden's denial, Kenney turned to the Psychologists. (See Attachment-Two) Both named psychologists repeatedly tell Kenney, "there's nothing we can do for you." Alternatively, Kenney's only recourse is to seek injunctive-relief pursuant to Rule 65.

## SUPPORTING-AUTHORITIES

Kenney is experiencing "severe" emotional problems from being in an isolation-segregation-SHU-CELL. Therefore, such confinement is detrimental to his mental health and well-being. "While the prison administration may punish, it may not do so in a manner that threatens the physical and MENTAL HEALTH of prisoners." Madrid v. Gomez, 889 F. Supp. 1146, 1260 (N. D. Cal. 1995) (quoting Young v. Quinlan, 960 F.2d 351, 364 (3rd Cir. 1992) (Hon. Justice Nygaard). Keeping Kenney in isolation also raises "serious" DUE PROCESS concerns. France v. Moreland, 805 F.2d 798, 799 (8th Cir. 1986). "The duration and conditions of segregated confinement cannot be ignored in deciding whether such confinement meets constitutional standards." Young, supra, 960 F.2d at 364. Perspicuously, "[i]nmates [like Kenney] suffering from mental illness should not be put in the SHU." Madrid. Id. at 1267. Here Defendants are "exposing [Kenney] to unreasonable

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CONCLUSION OF SUPPORTING  
AUTHORITIES

risk of serious damage to future health." Helling v. McKinney, 509 U.S. 25, 34-35 (1993), because of "the unnecessary and wanton infliction of pain." Young, supra, 960 F.2d 360 n. 22.

SOUGHT OF INJUNCTIVE RELIEF

Kenney request the following injunctive relief:

- 1) For the Court to ORDER Warden-Mendez to re-release Kenney to general population at Allenwood;
- 2) Or transfer Kenney to USP-Lewisburg, along with an ORDER that Kenney be released into general population. Note Lewisburg is within the jurisdiction;
- 3) ORDER the U.S. Marshal at its discretion to either transfer Kenney to USP-Lewisburg, or nearby facility into an open general [prison] population.

Shall the Court decide to grant any of the above whole, or in part. That it will not affect this Court's prior ORDER of April 13, 2001, where Kenney is to remain in this jurisdiction.

CONCLUSION

Failure to grant an injunction will result in Kenney suffering "great" [mental] injury. Therefore, "[i]t would be odd to deny an injunction to inmates who plainly proved <sup>on</sup> an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." Helling, 509 U.S. at 33.

WHEREFORE, based upon the aforesaid facts Kenney respectfully seeks injunctive relief from this Honorable Court.

Dated: 10/21/01

Respectfully submitted - requested,

Kenney # 05238-041

Mr. John Charles Kenney, PROSE



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,  
Plaintiff,  
v.

Case No. 1:CV-00-2143  
Hon. Judge McClure, Jr.  
(Presiding)

JAKE MENDEZ, Warden, et al.,  
Defendants.

CERTIFICATE OF SERVICE BY AN INCARCERATED LITIGANT

I, John Charles Kenney, plaintiff, acting pro se hereby certify that on Sunday, October 21, 2001, I forwarded a true carbon-copy of a (6) six-page hand written "PRELIMINARY INJUNCTION MOTION" / Brief In support, along with (4) four pertinent documents pursuant to FRCP, Rule 65(a)(1), and (f). By placing said contents in a postpaid first class, preaddressed envelope by mailing it to Defendants' Representative below:

The Honorable Terz  
U.S. Attorney's Office  
Federal Building, Ste. 316  
240 West Third Street  
Williamsport PA 17701-6465

Further, I certify that this certificate is compliant with Local Rule 7.2. governing certificates of service.

Kenney #05238-041

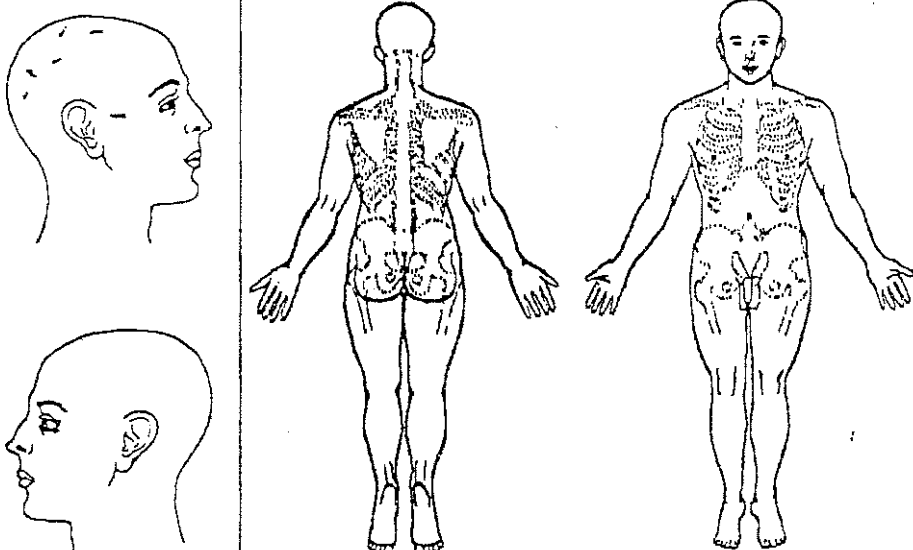
Mr. John Charles Kenney, pro se  
Registration No. 05238-041

# ATTACHMENT ONE



U.S. DEPARTMENT OF JUSTICE  
 Federal Bureau of Prisons

**Attachment-One**  
 INMATE INJURY ASSESSMENT AND FOLLOWUP  
 (Medical)

1. Institution <b>ALP</b>		2. Name of Injured <b>Kenny John</b>		3. Register Number <b>05238-041</b>	
4. Injured's Duty Assignment <b>Compound Sanitation</b>		5. Housing Assignment <b>III A</b>		6. Date and Time of Injury <b>9/29/99 1245</b>	
7. Where Did Injury Happen (Be specific as to location) <b>III A</b>		Work Related? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		8. Date and Time Reported for Treatment <b>9/29/99 1305</b>	
9. Subjective: (Injured's Statement as to How Injury Occurred)(Symptoms as Reported by Patient) "The unit manager said "Fock you you're getting a celley" and started hitting me on the head with his keep."  Signature of Patient _____					
10. Objective: (Observations or Findings from Examination) Head: numerous small cuts all over head. mild bleeding lateral side of @ eye small cut Eyes: PERRL No other injuries noted				X-Rays Taken _____ Not Indicated <input checked="" type="checkbox"/> X-Ray Results _____	
11. Assessment: (Analysis of Facts Based on Subjective and Objective Data) Mild superficial abrasions throughout head					
12. Plan: (Diagnostic Procedures with Results, Treatment and Recommended Follow-up) ① Head abrasions cleaned w peroxide. Antibiotic ointment applied ② @ band aid ③ Alert medical staff if any problems arise					
13. This Injury Required: <input type="checkbox"/> a. No Medical Attention <input checked="" type="checkbox"/> b. Minor First Aid <input type="checkbox"/> c. Hospitalization <input type="checkbox"/> d. Other (explain)  <input type="checkbox"/> e. Medically Unassigned <input type="checkbox"/> f. Civilian First Aid Only <input type="checkbox"/> g. Civilian Referred to Community Physician  Signature of Physician or Physician Assistant <b>J Desato PA</b>					

Defendant's copy portion of discovery material / Dist. Ct. No. 4:99-cv-02143-JEJ-PA

# ATTACHMENT TWO

Allenwood USP

Attachment-Two

"Cop Out" Request

Tuesday, April 10, 2001

Dear, Dr. J. Mitchell: (Chief Psychologist)

RE: Inmate's Request For Crisis Assistance

For reasons unknown, I was violently beaten, and placed in isolation-segregation on 9/29/99. Prior to 9/29/99, I was not consistently taking my medication CLONIDINE previously prescribed to me for Impulse Control and Schizoid Personality Disorders. While, I was still in segregation on 5/27/00. I voluntarily ceased taking the clonidine, due to adverse side-effects, i.e., thought confusion, bloating, and weight gaining. I've been<sup>in</sup> isolation now for approximately (19) nineteen-months. At this time, I still cannot figure out <sup>why</sup> I'm being kept in isolation. This type of confinement is seemingly becoming "too great" for me to mentally tolerate. Anxiety-attacks are frequent. Sleeping is becoming impossible. Having doomed thoughts of catastrophe ending in tragedy. Rationality is trivial. Nothing appears to make sense anymore, or at all. Actually nothing ever made sense. Constant feel of hopelessness with increasing terror. I feel frightened all the time. And emotionally distraught. For these reasons, I'm requesting your assistance in having me released out of isolation-segregation, or transferred to another facility that will stop keeping me in isolation. There is no reason to keep holding me in isolation, other than retaliation.

KENNEY # 05238-041

Allenwood USP's SHH"Urgent Request"Emotionally Distraught / Crisis Reflection

Attachment

Saturday, August 25, 2001

Dear, Dr. Trgovac:

(Psychologist)

In appearance, I may appear normal and pleasant, often times smiling. But, this is a fake appearance, where I hide true feelings that lurk within me. Oddly, I don't know why I hide such feelings. Maybe because, I don't want anyone to know how bad I really feel. Or, how bad things really are. Recently things have been worsening for me. That the (24) twenty-four months is taking its toll on me. No matter how hard, I fight back the tears, and emotions within. I'm beginning to feel that, I can no longer fight the unusual conditions of segregative ("isolation-cell") confinement. Feelings of hopelessness is rapidly increasing. Anxiety, and terror are building. Associated with thoughts of annihilation and/or destruction. Traumatization appears to be the norm, or constant. I'm deteriorating from being kept behind this 400 pound steel door 23 hours a day, 7-days a week for the past 24-months. Devastation is encompassing me. Isolation-segregation is no doubt detrimental to my mental, and physical well-being. As a human-being, I should not have to be subjected to this. That there is absolutely no reason to keep holding me in an isolation-cell. Other than retaliation. As a result, I'm requesting to be released out of isolation.

Kenny #05238-041



# ATTACHMENT THREE



*Attachment-Three*

U.S. Department of Justice

Federal Bureau of Prisons

U.S. Penitentiary, Allenwood

*Redesignation*

White Deer, PA 17887-3500

February 1, 2000

*per JB*  
**REPLY TO:** Jake Mendez, Warden  
**ATTN OF:** USP, Allenwood, PA

**SUBJECT:** Request for Transfer (Disciplinary - Code 309)  
USP Marion, IL

**TO:** David M. Rardin, Regional Director  
NERO, Philadelphia, PA

**ATTN:** James Warner, Correctional Services Administrator

1. **Name and Register Number:** KENNEY, John  
05238-041
2. **Rationale for Redesignation:** Inmate Kenney was redesignated to USP Allenwood, PA, in October 1998, as a Nearer Release transfer from USP Lompoc, CA. Since his arrival at this facility, inmate Kenney has increasingly become a management problem, displaying a disregard and disrespect for staff and established rules and regulations. He has incurred two disciplinary infractions for refusing his work assignment and, on numerous occasions, has become belligerent and confrontational when forced to accept cellmates.

On September 29, 1999, inmate Kenney requested to speak with the Unit Manager of his housing unit regarding a new cellmate whom he had received. Inmate Kenney requested that he be allowed to reside in a single cell. When the Unit Manager denied inmate Kenney's request, inmate Kenney became agitated and began throwing punches at the Unit Manager. The Unit Manager was able to defend himself and, with the assistance of the Unit Officer, restrained inmate Kenney until additional help arrived.

3. **Proposed Transfer Code:** 309

*Attachment-Three*

**Request for Redesignation**

**KENNEY, John**


**05238-041**

**Page 2**

4. **CIMS Assignment:** Separation
5. **Release Destination:** Western District of Pennsylvania
6. **Institution Recommended:** USP Marion, IL, or any appropriate High Security level institution.
7. **Medical Status:** Inmate Kenney is assigned a regular duty status with no medical restrictions.
8. **Does the Inmate Concur with this Transfer Request?** No
9. **Additional Pertinent Information-BP 337/338 Discrepancies:**  
Inmate Kenney is classified as a 28 point High Security level inmate being maintained under Max Custody. He is serving a 262 month SRA sentence for Conspiracy (Bank Robbery), Bank Robbery and Armed Bank Robbery. He has a projected release date of September 21, 2016, with five years of supervision to follow. It should be noted that one of inmate Kenney's conditions of supervision is mental health aftercare. Inmate Kenney will attempt to explain his erratic behavior and necessity for special consideration result from severe psychological disorders; however, psychology staff at this facility have confirmed that inmate Kenney should be considered fully functional and suitable for the general population.

The only discrepancy noted in the scoring of the BP-337 and the BP-338 pertains to history of violence. The BP-337 is scored with a serious history of violence between 5-10 years ago. On December 7, 1999, inmate Kenney was found guilty of Assaulting with Serious Injury (101-A). The BP-338 has been updated to reflect a serious history of violence less than five years ago.

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Request for Redesignation  
KENNEY, John  
05238-041  
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K. Keiser  
Prepared by: K. Keiser, Case Manager, Unit III

J. Gonzalez  
Reviewed by: J. Gonzalez, Unit Manager, Unit III

J. Sherman  
Reviewed by: J. Sherman, Captain

M. Tanner  
Reviewed by: M. Tanner, Acting CMC

R. Holt  
Reviewed by: Ronnie R. Holt, AW(P)



# ATTACHMENT FOUR



*Attachment-Four*

U.S. Department of Justice

Federal Bureau of Prisons

*U.S. Penitentiary, Allenwood*

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White Deer, PA 17887-3500

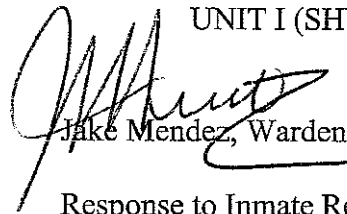
June 25, 2001

MEMORANDUM FOR INMATE JOHN KENNEY

REG. NO. 05238-041

UNIT I (SHU)

FROM:

  
Jake Mendez, Warden

SUBJECT:

Response to Inmate Request to Staff Member

This is in response to your Inmate Request to Staff Member, dated June 20, 2001, in which you request to be released to general population in lieu of transfer to USP Marion.

In reviewing this matter, it was found you were in possession of a weapon and seriously assaulted a staff member resulting in criminal charges being filed. Though a criminal court returned a not guilty verdict, you were found guilty during the institution disciplinary process of Code 101A, Attempted Assault with Serious Injury towards staff. The Discipline Hearing Officer recommended a disciplinary transfer as one of the sanctions for this infraction.

Based on this information and the seriousness of the incident, it has been determined your placement at USP Marion is fully warranted. Therefore, your request to return to general population is denied.

I believe this response adequately addresses your concerns.

*Attachment-Four*